IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6451 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVABHAI MELABHAI MALI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6451 of 2004

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by the order dated 13-4-2004 passed by the Police Commissioner, Vadodara City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. It is submitted by the learned counsel for the petitioner that the petitioner has been branded as bootlegger based three prohibition cases registered with Makarpura Police Station and impugned order of detention was passed on 13-4-2004. The argument was mainly concentrated on the point of delay in deciding the representation and communicating the decision to the detenu. It is submitted that the petitioner has sent a written representation to the detaining authority through advocate on 14-5-2004 and it was received by the authority on 18-5-2004. In support of which, original acknowledgment slip produced is ordered to be taken on record. Taking me through the affidavit filed by the authority in para 16 wherein it is stated that "I say and submit that representation of the advocate of the petitioner dated 14-5-2004 was not received by the P.C., Baroda office and, therefore, there is no question of consideration of representation.". It is further stated that "I say that the document requested by the petitioner in his representation being statement under Sec.161 of Cr.P.C. have been supplied." So, representation is replied qua the paras 23 and 24. In this connection, learned counsel for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as

such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 14-5-2004 sent through the advocate to the detaining authority was not at all taken into consideration though received on 18-5-2004. No satisfactory explanation has been putforward by the authorities for not considering the said representation in the affidavit. Hence, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

5. The petition is allowed. The impugned order of detention dated 13-4-2004 passed against the detenu Devabhai Melabhai Mali is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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